

***Frank Loses
Appeal;
Pardon Only
Hope***

**DEFEATED IN
COURTS,
FRANK COUNSEL
PLAN**

PARDON BOARD PLEA

Final Effort to Save
Condemn-

ed Man's Life Will Be
Made

Before Prison
Commission

and the Governor.

**GOVERNOR-ELECT
HARRIS**

MAY PASS ON THE CASE

Necessary Legal
Procedure

Will Make Execution
Impos-

sible Until About the
Middle

of June, It Is Said.

Attorneys for Leo M. Frank Monday were preparing to carry the fight for his life to the State Pardoning Board and the Governor, the Attorneys agreeing that all methods of continuing the fight in the Courts have been exhausted.

Frank, in the cell in the Tower, which at the end of this month he will have occupied for two years, received the news that his seventh and last Appeal had been turned down by the Courts very calmly. He was quietly talking with a friend, when a

Journal Reporter entered the cell, and handed him a Journal extra, from which he received the first news of the Court's Decision.

"I am naturally disappointed" said Frank, "but I will keep on fighting!" He refused to say anything else.

Leonard J. Haas and Harry A. Alexander, two of Frank's Counsel, who appeared before the United States Supreme Court, both stated to Journal Reporters, that they know of no further Court move and would go before the Prison Commission asking a pardon at once. A petition to the Prison Commission had not been prepared and work on it will begin probably during the day. The Attorneys did not intimate that they will await the United States Supreme Court's Mandate before making this move.

HARRIS MAY DECIDE.

Attorneys familiar with the Proceedings in similar Cases were of the opinion Monday that the Frank Case will be finally decided by Governor Nat E. Harris, who will be inaugurated during the middle of June. The Routine Procedure in the Case, it is said, will likely hold it before the Prison Commission until Governor John M. Slaton is out of Office.

Solicitor Hugh M. Dorsey said that according to the rules of Procedure, the Mandate of the United States Court, which corresponds to the remittitur of the Georgia Supreme Court, will not be handed down to the District Court for thirty days. It will then be transmitted to the Superior Court of Georgia, and when it is received by the Clerk of that Court, Solicitor Dorsey will sue out another Writ of Habeas Corpus, bringing Frank before the Court for the Fourth Time to have a date of the execution of his sentence fixed.

In cases of a Resentencing, the State law is not as specific, as where an original sentence is being imposed, and the date for Frank's execution will likely be fixed at about forty days from the day he is brought into Court on the State's Habeas Corpus.

This shows that the routine Procedure alone will prevent the arrival of the next day fixed for the execution of the death sentence before the middle of June.

Solicitor Dorsey was informed of the Court's Decision by *The Journal*, and he had only this comment to make:

"That is no more than I expected. I would have been surprised had the Decision been otherwise."

Frank's Attorneys, directly upon learning that the Supreme Court of the United States had held against their client, announced that they would go directly before the Pardon Board.

Leonard J. Haas stated that he understands that in Felony Cases the Prison Commission is practically always ready to receive Petitions, and he said that no time would be lost in bringing the Petition of Frank before that body.

MEMBERS OF BOARD.

The Georgia Prison Commission or Pardoning Board, as it is often called, is composed of three members, R. E. Davidson, Chairman; T. E. Patterson and E. L. Rainey.

After the Petition is presented, a date for the hearing will probably be set, and the Commission will then hear from both sides.

It is customary for the Prison Commission to require that ten days elapse between the date of filing of a Petition and the date of a hearing.

The Commission is not required to make its Decision on a given Case within any specified time. It may, as it did in the famous McNaughton Case, withhold its decision for several months. In a Capital Case, of course, the Commission when not ready to make a Decision when the date for execution of sentence arrives, recommends to the Governor that a respite be granted the Prisoner.

It had been generally expected that Frank's Attorneys would not Appeal to the Prison Commission until the Mandate of the Supreme Court had been received by the State Court and date for sentence fixed. This, however, will not be the Case, according to Mr. Alexander, who says Frank's Counsel will proceed at once, without waiting for the Mandate.

It is possible, as the result of this Decision on the part of the Attorneys, for the Case to be brought before Governor Slaton, although it will more likely go to his successor.

Governor Slaton was informed of the Federal Court's Decision Monday by a Journal Reporter.

"The Frank Case has never been officially brought to my attention," the Governor said.

"When it does reach me officially, I will give it Official consideration. Until then, I officially know nothing of such a case."

PDF PAGE 1, COLUMN 6

*"Frank
Innocent,"
Asserts
Attorney*

After Court Ruling

Upon receiving the news of the Decision adverse to Leo M. Frank Monday, H. A. Alexander, one of Frank's Attorneys, gave out the following statement in which he reiterated his belief that Frank is innocent:

"During the last eighteen months, my position as one of Leo M. Frank's Attorneys has brought me into the closest and most intimate contact with him. During that time, I have discussed with him every phase of the Case in the utmost detail and particularity. During that time, he has uttered not one word or made one gesture indicating guilt in the remotest degree. There has been no word or look passed between us, that I would not have been perfectly willing for the whole City to have heard and seen. I am as satisfied of his innocence as I am of my own existence. He is a man of Superior Character who, in the terrible ordeal through which he is passing, is sustained by his character, his absolute innocence, and his great trust in the Almighty."

"The judgments that have been rendered by the Courts have been controlled by technical reasons. Our Appeal is now to the people of Georgia and to their Officers. Knowing the people of this State, and their Deep Sense of Justice and Right, we know that, with the fearful doubt that hangs over the correctness of the verdict, they do not wish to see Leo M. Frank suffer the extra penalty."

PDF PAGE 1, COLUMN 7

**TWO
JURISTS
DISSENT;
SEVEN
AGREE**

United States Supreme
Court

Refuses to Reverse
Judge

Newman, Who
Denied Ha-

beas Corpus Writ—
Holds

That Frank Was Given
Full-

est Right and
Opportunity

Be Heard

BY RALPH SMITH.

WASHINGTON, April 19.—Leo M. Frank, under death sentence for the murder of Mary Phagan, an Atlanta Factory girl, lost another step in his fight for life in the Supreme Court of the United States today.

In a decision to which Justices Holmes and Hughes dissented, the Court dismissed Frank's Appeal from the Federal Court of Georgia which refused to release him on a Writ of Habeas Corpus.

Frank contended that alleged "mob violence" at his trial, and the fact that he was absent from the Court Room when the Jury returned its verdict had removed him from the Jurisdiction of the Courts of Georgia.

The majority opinion of the Supreme Court today rejected all those contentions and declared Frank had enjoyed all his legal rights in the Georgia Courts.

Seemingly, no other Avenue of escape from the death penalty is open to Frank through the Courts. The State Pardon Officials might relieve him.

In a Memorandum given out by Justice Pitney covering his opinion the following explanation and analysis is given.

POINTS IN THE DECISION.

"The Principal points raised in support of Frank's Application for release on Habeas Corpus assented to the United States District Court in Georgia and to the Supreme Court of the United States upon this Appeal, are, first, that the disorder in and about the Court Room judging the trial and up to and at the rendition of the verdict amounted to 'mob domination,' to which not only the Jury but the presiding Judge succumbed, and that this in effect brought about a dissolution of the Court and deprived it of

Jurisdiction to receive a verdict and pronounce sentence against the Prisoner; secondly, that Frank's involuntary absence at the time the verdict was rendered deprived him of an essential part of the right of trial by Jury, and a deprivation due process of law guaranteed by the Fourteenth Amendment and such absence could not be waived by Frank; and, thirdly, that the ground upon which the Supreme Court of Georgia overruled his objections based upon his absence when the verdict was rendered (namely that this objection was waived because it was not raised at the first motion for new trial although the facts were then known to Frank and his Counsel) was so far inconsistent with previous Decisions of the same Court that it was equivalent in effect to an ex-Post Facto law.

DISORDER ALLEGATIONS.

1. But the Allegations of Disorder in and about the Court Room amounting to mob domination were submitted to the trial Court in a motion for a new trial made about two months after the conviction, and were afterwards submitted to the Supreme Court of Georgia on Appeal. In both Courts, evidence was presented pro and con and both Courts decided that the allegations were unfounded in fact save in a few minor particulars not now material. Frank included in his Application for Habeas Corpus the evidence on his side of the question, but omitted to include that which was introduced by the State against him, and by which the Georgia Courts were convinced that the allegations of disorder and mob domination were untrue. But the Court of the United States in determining the question whether an Application for the Writ of Habeas Corpus is held in custody in violation of the Constitution of the United States, must take into consideration not merely the Proceedings and Judgment of the trial Court, but also the Proceedings in the Appellate Court of the State.

(2.) The question of a deprivation of liberty without due Process of Law contrary to the Fourteenth Amendment involves not the Jurisdiction of any particular Court, but the Power and Authority of the State itself. The Prohibition of the Amendment is

addressed to the State and the question whether a State is depriving a Prisoner of his liberty without due Process of Law, where the offense for which he is prosecuted is based upon a law that does no violence to the Federal Constitution, cannot be determined, with fairness to the State, until the conclusion of the Course of Justice in its Courts. Therefore the results of the Appellate review cannot be ignored when a Prisoner applies to a Federal Court for his release on Habeas Corpus.

RULES ESTABLISHED.

(3.) These Rules and Principles are established: That the due Process of Law guaranteed by the Fourteenth Amendment has regard to substance of Right, and not to matters of Form or Procedure; it is open to the Courts of the United States upon an Application for the Writ of Habeas Corpus to look beyond forms and inquire into the very substance of the matter to the extent of deciding whether the Prisoner has been deprived of due Process of Law,

(Continued on Page 5, Col. 1.)

PDF PAGE 5, COLUMN 1

**FRANK LOSES
APPEAL**

TO HIGHEST COURT; 2 JURISTS DISSENT

(Continued from First Page.)

and the investigation must take into consideration the entire course of Proceedings in the Courts of the State, and not merely a single step in these Proceedings.

(4.) The obligation resting upon this Court, as upon the United States District Court, to look through the form and into the very heart and substance of the matter, applies as well to the forms of Frank's Petition as it applies to the State Proceedings which he attacks.

ALLEGATIONS GROUNDLESS.

The petition contains a narrative of disorder, hostile manifestations, and uproar, which, if it stood alone and were to be taken as true, may be conceded to have been inconsistent with a fair trial and an impartial verdict. But to consider this as standing alone is to take a wholly superficial view; for the narrative is coupled with other statements from which it clearly appears that the same allegations of disorder were submitted first to the trial Court, and afterwards to the Supreme Court of Georgia, as a ground for avoiding the Consequences of the trial, and these

allegations were considered by these Courts successfully at times and places and under circumstances, wholly apart from the atmosphere of the trial and free from any suggestion of mob domination or the like; the facts were examined by those Courts upon evidence submitted on both sides, and both Courts found Frank's allegations to be groundless, except with respect to a few matters of irregularity not harmful to the defendant. This Court holds that such a determination of the facts can not in this collateral inquiry be treated as a nullity, but must be taken as setting forth the truth of the matter until some reasonable ground is shown for an inference that the Supreme Court of Georgia either was wanting in Jurisdiction or committed error in the exercise of its Jurisdiction; and the mere assertion by the Prisoner that the facts of the matter are other than the State Courts upon full investigation determined them to be will not be treated as raising an issue respecting the correctness of that determination; especially not where the very evidence upon which the determination was rested is withheld by him who attacks the finding.

ABSENCE FROM COURT.

(5) Respecting the fact that Frank was not present in the Court Room when the verdict was rendered, his presence having been waived by his Counsel but without his knowledge or consent, the Georgia Court held that because Frank, shortly after the verdict was made fully aware of the facts, and he then made a motion for a new trial on over one hundred grounds, not including this as one, and had that motion heard by both the trial Court and the Supreme Court, he could not after this motion had finally adjudicated against him, move to set aside the verdict as nullity because of his absence when the verdict was rendered. This Court holds that there is nothing in the fourteenth Amendment to prevent a State from adopting and enforcing so reasonable a regulation of Procedure.

(6) It is settled by repeated decisions of this Court that the due Process of Law clause of the Fourteenth Amendment has not

the effect of imposing upon the States any particular form or mode of Procedure, so long as the essential Rights of notice and hearing, or opportunity to be heard, before a competent tribunal are not interfered with. Indictment by Grand Jury is not essential to due Process. Trial by Jury is not essential to it, either in Civil or in Criminal Cases. This Court in previous decisions has sustained the right of a State to permit one charged with a Capital Offense to waive a trial by Jury and be tried by the Court; and in another Case has sanctioned a State Law permitting the Defendant in a Capital Case to absent during a part of the trial.

(7) This Court holds the practice established in the Criminal Courts of Georgia that a Defendant may waive his right to be present when the Jury renders its verdict, and that such waiver may be given after as well as before the trial, and is to be inferred from the making of a motion for new trial upon other grounds when the facts respecting the rendition of the verdict are within the Prisoner's knowledge, is a regulation of Criminal Procedure that it is within the Authority of the State to adopt. Since the State may, without infringing the Fourteenth Amendment, abolish trial by Jury, it may limit the effect to the given to an error respecting one of the incidents of such trial. The presence of the Prisoner at the rendition of the verdict is not so essential a part of the hearing that a rule of practice permitting the accused to waive it, and holding him bound by the waiver, amounts to a deprivation of due Process of Law.

(8) The contention that the Decision of the Supreme Court of Georgia that Frank had waived the point respecting his absence when the verdict was rendered amounted in effect to an ex-Post Facto law because inconsistent with previous decision of the same Court, is overruled by this Court because, assuming the inconsistency, the prohibition contained in the Constitution of the United States, "No State shall pass any bill of attainder, ex-Post Facto Law, or law impairing the obligation of Contracts," as its terms indicate, is directed against legislative action only, and does not reach erroneous or inconsistent Decisions by Court.

(8) To conclude; Frank's Petition shows that having been formally indicted for murder, he was placed on trial before a Court of competent Jurisdiction, with a Jury lawfully constituted; he had a public trial, deliberately conducted, with the benefit of Counsel for his Defense; he was found guilty and sentenced pursuant to the laws of the State; twice he has moved the trial Court to grant a new trial, and once to set aside the verdict as a nullity; three times he has been heard upon Appeal before the Court of last resort of Georgia, and in every instance the adverse action of the trial Court has been affirmed.

PUBLIC SENTIMENT.

His allegations of hostile public sentiment and disorder in and about the Court Room improperly influencing the trial Court and the Jury against him, have been rejected because found untrue in point of fact upon evidence presumably justifying that finding and which he has not produced in the present proceeding; his contention that his lawful rights are infringed because he was not permitted to be present when the jury rendered its verdict has been set aside because it was waived by his failure to raise the objection in due season when fully cognizant of the facts. In all of these proceedings, the State, through its Courts, has retained Jurisdiction over him, has accorded to him the fullest right and opportunity to be heard according to the established modes of Procedure, and now holds him in Custody to pay the penalty of the crime of which he has been adjudged guilty. In the opinion of this Court he is not shown to have been deprived of any right guaranteed to him by the Fourteenth Amendment or any other Provision of the Constitution or laws of the United States; on the contrary, he has been convicted and is now held in Custody under due Process of Law within the meaning of the Constitution.

DISSENTING OPINION.

In their dissenting opinion, Justices Holmes and Hughes were very severe in characterizing the trial of Frank in the State Court:

“We lay on one side the question whether the petitioner could or did waive his right to be present at the Holding of the Jury. That question was apparent in the form of the trial and was raised by the Application for a Writ of Error, and although after the Application to the Full Court we thought that the Writ ought to be granted, we never have been impressed by the Argument that the presence of the Prisoner was required by the Constitution of the United States. But Habeas Corpus cuts through all forms and goes to the very tissue of the structure. It comes in from the outside, not in subordination to the Proceedings, and although every form may have been preserved opens the inquiry whether they have been more than an empty shell.”

“The Argument for the Appellee in substance is that the trial was in a Court of Competent Jurisdiction, that it retains Jurisdiction although, in fact it may be dominated by a mob, and that the Rulings of the State Court as to the fact of such Domination cannot be reviewed. But the Argument seems to us inconclusive. Whatever disagreement there may be as to the scope phrase ‘due process of law,’ there can no doubt that it embraces the Fundamental Conception of a fair trial, with opportunity to be heard. Mob law does not become due process of law by securing the assent of a terrorized Jury. We are not speaking of mere Disorder, or mere irregularities in Procedure, but of accounts where the Processes of Justice are actually subverted. In such a Case, the Federal Court has Jurisdiction to issue the Writ. The fact that the State Court still has its general Jurisdiction and is otherwise a Competent Court does not make it impossible to find that a Jury has been subjected to intimidation in a particular Case. The loss of Jurisdiction is not general but particular, and proceeds from the control of a hostile influence.

LOOK AT FACTS.

“The single question in our minds is whether a petition alleging that the trial took place in the midst of a mob savagely and manifestly intent on a single result is shown on its face unwarranted, by the Specifications, which may be presumed to

set forth the strongest indications of the fact at the Petitioner's Command. This is not a matter for polite presumptions; we must look facts in the face. Any Judge who has sat with Juries knows that in spite of forms they are extremely likely to be impregnated by the envioning atmosphere. And when we find the Judgment of the expert of the spot, of the Judge whose Business it was to preserve not only form, but substance, to have been that if one Juryman yielded to the reasonable doubt that he himself later expressed in Court as the result of most anxious deliberation, neither Prisoner nor Counsel would be safe from the rage of the Crowd, we think the presumption overwhelming that the jury responded to the passions of the mob; of Course, we are speaking only of the Case made by the petition, and whether it ought to be heard.

Upon allegations of this gravity in our opinion, it ought to be heard, whatever the Decision of the State Court may have been, and it did not need to set forth contradictory evidence, or matter of rebuttal, or to explain why the motions for a new trial and to set aside the verdict were overruled by State Court. There is no reason to fear an impairment of the Authority of the State to punish the guilty. We do not think it impracticable in any part of this Country to have trials free from outside control. But to maintain this immunity it may be necessary that the Supremacy of the law and of the Federal Constitution should be vindicated in a Case like this. It may be that on a hearing a different complexion would be given to the Judge's alleged request and expression of fear. But supposing the alleged facts to be true, we are of the opinion that if they were before the Supreme Court, it sanctioned a situation upon which the Courts of the United States should act, and if for any reason they were not before the Supreme Court, it is our Duty to act upon them now and to declare lynch law as little valid when practiced by a regularly drawn Jury as when administered by one elected by a mob intent on death.
